IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2431 OF 1990

Bhujanga Dashrath Sarawade,)
Age about 28 years, Occ:Service,)
Residing at Thakar Colony,)
Vasant Nagar, Baramati, Dist.)
Pune.)... Petitioner.

Versus

1) Shri Raghuvir Sharad Pataskar)
Age about 33 years, Occ:)
Service, Residing at Kakade)
Wada, Kacheri Road, Baramati,)
District Pune.)
2) Anekant Education Society,)
A Society registered under)
the Societies Registration)
Act, 1860, and also registe-)
-red as a Public Charitable)
Trust under the provisions)
of the Bombay Public Trusts)

Act, 1950, having its)
registered office at Baramati)
District Pune.)

3) The Principal,)
Tuljaram Chaturchand College)
of Arts & Sciences, Baramati,)
District Pune.)

4) The State of Maharashtra)
(Notice to be served on the)
Government Pleader, Appellate)
Side, High Court, Bombay.))

5) The Deputy Director of)
Education, Maharashtra State,)
Pune Region, Pune.).... Respondents.

Mr. R. S. Mahamane for the Petitioner.
Mrs. Anita Agarwal for Respondent No.1.
None present for Respondent Nos.2 & 3.
Mr. M. H. Solkar, AGP for Respondent Nos.4 & 5.

-: ALONG WITH :-

WRIT PETITION NO. 2439 OF 1990

1) Anekant Education Society,)
A Society registered under)
the Societies Registration)
Act, 1860, and also registe-)
-red as a Public Charitable)
Trust under the provisions)
of the Bombay Public Trusts)
Act, 1950, having its)
registered office at Baramati)
District Pune.)
2) The Principal,)
Tuljaram Chaturchand College)
of Arts & Sciences, Baramati,)
District Pune.)... Petitioners.

Versus

1) Shri Raghuvir Sharad Pataskar)
Age about 33 years, Occ:)
Service, Residing at Kakade)
Wada, Kacheri Road, Baramati,)
District Pune.)
2) Shri B. D. Saravade)

Age about 33 Yrs.Occ:Service,)
C/o. The Principal, Tuljaram)
Chaturchand College of Arts)
and Science, Baramati,)
District - Pune.)

3) The State of Maharashtra)
(Notice to be served on the)
Government Pleader, Appellate)
Side, High Court, Bombay.))

4) The Deputy Director of)
Education, Maharashtra State,)
Pune Region, Pune.).... Respondents.

None present for the Petitioners.
Mrs. Anita Agarwal for Respondent No.1.
Mr. R. S. Mahamane for Respondent No.2.
Mr. M. H. Solkar, AGP for Respondent Nos.3 & 4.

CORAM : S. A. BOBDE, J.

DATED : 21ST MARCH, 2005.

JUDGMENT :

Both these petitions are against the same order of the School Tribunal dated 22nd February, 1990 in

Appeal No.132 of 1988 and are therefore taken up for decision together.

2. The appeal before the School Tribunal was filed by Raghuvir Sharad Pataskar against termination of his services with effect from 20th April, 1988 by Anekant Education Society. The appellant later joined one Bhujanga Dashrath Sarawade, as a respondent, since he was appointed in the vacancy created by the termination. The School Tribunal allowed Pataskar's appeal and directed his reinstatement.

3. Sarawade has filed Writ Petition No. 2431 of 1990 challenging Pataskar's reinstatement. The Anekant Education Society has filed Writ Petition No.2439 of 1990 also challenging the order of reinstatement. None appears for the petitioners in Writ Petition No. 2439 of 1990. It is, therefore, dismissed in default. Rule discharged.

4. As regards the Writ Petition No.2431 of 1990 the relevant facts are as follows:-

Pataskar, the respondent No.1 herein was appointed on 16th July, 1986 for the Academic Year

1986-87. The appointment order clearly stated that the appointment was in a "reserved vacancy". He accepted the said appointment order by his letter dated 16th July, 1986. The Deputy Director of Education, Pune approved it by his letter dated 3rd September, 1986 for the Academic Year 1986-87. On 14th April, 1987 there was another advertisement in pursuance of which Pataskar was again appointed by order dated 25th June, 1987 for the period from 20th June, 1987. This appointment was also against "reserved" category. It was approved as before for the Academic Year 1987-88 only.

5. This post of a full time lecturer in English was again advertised after the Academic Year ending with 1988. But this time the Pataskar was not appointed. He, therefore, filed an appeal before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Various contentions were raised by the parties including that of limitation.

6. The Tribunal observed that the Pataskar was appointed in a "reserved" vacancy for one year only at a time during the two relevant years. There was

no dispute about this fact. There is also no dispute about the fact that Pataskar is an open category candidate. After examining the provisions regarding 100 points roster register, the Tribunal came to the conclusion that there was a backlog of 2 S.C. and 3 S.T. candidates and a surplus of 5 O.B.C. candidates during the Academic Year 1986-87. The Tribunal observed that in view of the following decisions:

> **M. R. Balaji v/s State of Mysore,** A.I.R. 1963 SC 49; **Devdasan v/s Union of India** A.I.R. 1964 SC 179; **A.B.S.Karmachari Sangh v/s Union of India,** A.I.R. 1981 SC 298 and **Gopalkrishna v/s State of Maharashtra,** 1987 Mh.L.J. 655 (Full Bench).

4 posts out of 8 new posts were filled during the Academic Year 1986-87 and that 4 out of 8 posts that were filled were "liable to be treated as unreserved posts". After making the above observations, the Tribunal came to the conclusion that of the 8 new appointees for the year 1986-87, only two posts were filled in by newly recruited candidates. Curiously,

the Tribunal devised a principle as follows:

> "It is just and proper to treat the vacancy held by the trained person as ‘open’ and to keep the vacancy held by the untrained person as ‘reserved’.

On this basis the Tribunal came to the conclusion that the respondent No.1 was appointed against the clear permanent vacancy and not against the reserved vacancy and therefore he was not entitled to be treated as having been appointed on probation and his services not having been terminated in accordance with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules and were therefore liable to be stayed.

7. Having heard the learned Counsel for the petitioner and the respondents, I am of view that the order of the Tribunal suffers from an error of law apparent on its face and is not sustainable. In the first place, the Tribunal has not given due effect to the fact that the respondent No.1 was not appointed for a period of two years. He was appointed on two occasions for a period of one year alone. In

accordance with the decision of the Supreme Court in **Hindustan Education Society and Anr. v/s Sk. Kaleem Sk. Gulam Nabi and Ors.,** AIR 1997 SC 2126, he could not be said to be entitled to a benefit of Section 5(2) of the M.P.E.S. Act and Rules. Section 5(2) reads as follows:

> "Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall on completion of this probation period of two years, be deemed to have been confirmed."

8. Further, the Tribunal could not have held that the respondent No.1 was appointed against an unreserved or open post in view of the clear stipulation in the order of appointment that he was being appointed against a reserved vacancy. Admittedly, it was a reserved vacancy. The appointment was expressly against that vacancy. It was not open for the Tribunal to ignore the appointment order and hold contrary to it that the respondent No.1 was appointed against an open post. The principle which the

Tribunal seems to have devised that ‘it is just and proper to treat the vacancy held by the trained person as ‘open’ and to keep the vacancy held by the untrained person as ‘reserved’, cannot be accepted.

9. In this view of the matter, I am of view that the Tribunal committed an error in coming to the conclusion that the petitioner was appointed for a period of two years on probation in a clear and permanent vacancy and therefore could not have set aside his termination and directed reinstatement.

10. The impugned order is, therefore, quashed and set aside. Rule made absolute. Writ petitions are disposed of, accordingly.

11. This judgment shall not come in the way of re-employment of respondent No.1 Raghuvir Sharad Pataskar by respondent No.2, Anekant Education Society.

12. There shall be no order as to costs.

Sd/-

(**S. A. BOBDE, J.**)

TRUE COPY

(A.M.TAILOR)
Personal Assistant to the
Hon’ble Shri Justice S.A.Bobde.